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U.S. Citizenship
and Immigration
Services



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MAR 29 2004

FILE:

Office: PHOENIX, ARIZONA

Date:

IN RE:

Applicant:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after deportation or removal was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States without a lawful admission or parole in 1978. On May 16, 1983 an Immigration Judge ordered the applicant deported from the United States and on May 17, 1983 he was removed from the United States pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act). The record further reflects that the applicant admitted under oath that he was present in the United States without a lawful admission or parole in July 1983 and without permission to reapply for admission in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to remain in the United States and reside with his spouse and children.

The District Director determined that section 204(c) of the Act applies in this matter and the applicant is not eligible and may not apply for any relief. The District Director then denied the application accordingly. See *District Director Decision* dated May 15, 2003.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception. - Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens

who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

Section 204 states in pertinent part: - Procedure for granting immigrant visas.

(c) Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

On appeal, counsel states that the applicant never admitted at any time that his first marriage was fraudulent, therefore he should not be statutorily ineligible for relief under the Act and his I-212 application should be approved. The record reflects that on May 11, 1983 the applicant's first spouse withdrew the relative petition filed on his behalf and signed a statement in which she admits that she married the applicant in order to help him get his immigration papers and that the applicant was going to pay her for her assistance. Based on the record of proceeding it is clear that the applicant falls under section 204(c) of the Act and he is statutorily ineligible to receive any relief under the Act.

Notwithstanding the arguments on appeal, section 204(c) of the Act is very specific and applicable. The applicant is subject to the provision of section 204(c) of the Act, and he is not eligible for any relief under this Act. Therefore, since the applicant's Petition for Alien Relative, Form I-130, could not be approved, no purpose would be served adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.